

(2013) 08 P&H CK 0787

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 3204 of 2013 O and M

Gurdwara Baba Sang Dhesian
Sang

APPELLANT

Vs

Bhajan Singh and Another

RESPONDENT

Date of Decision: Aug. 16, 2013

Hon'ble Judges: Vijender Singh Malik, J

Bench: Single Bench

Advocate: Paramjit Singh Thiara, for the Appellant;

Final Decision: Dismissed

Judgement

Vijender Singh Malik, J.

This is regular second appeal of the plaintiff who has lost his suit as well as first appeal vide judgments and decrees dated 19.8.2011 and 6.5.2013 before learned Additional Civil Judge [Senior Division], Phillaur and learned Additional District Judge, Jalandhar respectively. Mohan Singh has been the owner in possession/joint owner of the land in dispute. Mohan Singh died on 10.11.2004. He was a bachelor. He was a Sikh by religion. He had great faith in Gurdwara Baba Sang Dhesian Sang and he used to live in the said Gurdwara since childhood. The Gurdwara used to serve Mohan Singh in his life time and provide him with all the necessities of live. On account of the same, Mohan Singh executed a valid registered will dated 5.2.2011 in favour of the plaintiff. He executed this will without any pressure and while he possessed a sound disposing mind. The plaintiff, therefore, became owner in possession of the land in dispute. Mohan Singh was not having cordial relations with defendants and was not even on speaking terms with them. They never served Mohan Singh in his life time. Mohan Singh never resided with them. About two months back, the defendants have started declaring that they have become owners in possession of the land of the share of Mohan Singh on the basis of a will dated 2.8.2004. They also claimed that they have got sanctioned mutation No. 4369 in their favour on the basis of the alleged will. They threatened to take forcible possession

of the suit land from the plaintiff and also to alienate the same to which they have no right.

2. The defendants have resisted the suit denying the plaintiff to have any right to file the suit. It is admitted that Mohan Singh was owner in possession of the suit land. It is further claimed that he was residing with Bhajan Singh, defendant No. 1 who has been real brother of Mohan Singh. Bhajan Singh used to serve him on account of which Mohan Singh executed a will dated 2.8.2004 in favour of defendant No. 1. It is claimed that on account of the will, after the death of Mohan Singh, defendant No. 1 has become owner and is in possession of the suit property. The suit is, consequently, prayed to be dismissed.

3. On the pleadings of the parties, the following issues were framed by learned trial court.

1. Whether deceased Mohan Singh executed legal and valid will dated 05.02.2001 in favour of plaintiff Gurdwara Sahib as alleged, if so its effect? OPP

2. Whether plaintiff is entitled to declaration as being owner in possession of 1/2 share qua the estate of Mohan Singh after declaring the will dated 2.8.2004 being illegal, null and void? OPP

3. Whether plaintiff is entitled to the relief of permanent injunction as prayed for? OPP

4. Whether the suit is not maintainable in the present form? OPD

5. Whether deceased Mohan Singh executed legal and valid will dated 2.8.2004 in favour of defendant No. 1 as alleged, if so its effect? OPD

6. Relief.

4. The parties led their respective evidence. Taking evidence of the parties, learned trial court took up issues No. 1, 2, 3 and 5 together and concluded thereunder that the will, Ex. D1, dated 2.8.2004 is validly proved to have been executed by Mohan Singh in favour of Bhajan Singh. Consequently, issues No. 1, 2, 3 and 5 have been decided against the plaintiff and in favour of the defendants. Taking issue No. 4 as not pressed, the suit was found to have failed and was dismissed with costs.

5. The appeal preferred by the plaintiff met with dismissal vide judgment and decree dated 6.5.2013 before learned Additional District Judge, Jalandhar.

6. Learned counsel for the appellant has contended that Mohan Singh and Bhajan Singh, the two brothers were not having cordial relations and they were not even on speaking terms. He has submitted that Mohan Singh was served by the plaintiff on account of his being issueless and unmarried and on account of the services rendered to him by the plaintiff - the Gurdwara, he executed a will dated 5.2.2001 in favour of the plaintiff and got it registered. He has submitted that by execution of

that will, the plaintiff had become owner of the property left by Mohan Singh. He has submitted that the second will is in favour of Bhajan Singh with whom the plaintiff was not even on speaking terms.

7. Learned counsel for the appellant was asked to point out the suspicious circumstances surrounding the execution of will dated 2.8.2004 in favour of Bhajan Singh. Learned counsel for the appellant has failed to bring to my notice any evidence on the basis of which it could be said that the execution of the will dated 2.8.2004 is shrouded with mystery. On the failure of learned counsel for the appellant to point out any circumstance regarding execution of the will which makes it suspicious document, the will Ex. D1 dated 2.8.2004 is to be taken as a valid will of deceased Mohan Singh. The will in favour of the plaintiff is prior in time to the will in favour of Bhajan Singh, defendant No. 1. The last will of the testator would prevail and, consequently, the plaintiff-appellant has no case of being owner in possession of the suit property. Moreover, no questions of law much less substantial questions of law arise in this appeal. Consequently, the appeal has no merit and is dismissed in Limine.